101ST CONGRESS
2d Session

SENATE

REPORT
101-407

FEDERAL GOVERNMENT'S USE OF THE RICO STATUTE AND OTHER EFFORTS AGAINST ORGANIZED CRIME

REPORT

MADE BY THE

PERMANENT SUBCOMMITTEE ON INVESTIGATIONS

OF THE

COMMITTEE ON GOVERNMENTAL AFFAIRS UNITED STATES SENATE

AUGUST 1 (legislative day, JULY 10), 1990.—Ordered to be printed

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Mr. GLENN, from the Committee on Governmental Affairs, submitted the following

REPORT

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I. INTRODUCTION

On April 11, 15, 21, and 29, 1988, the Senate Permanent Subcommittee on Investigations held public hearings on the effect of law enforcement's response to organized crime in the 25 years since the testimony of Joseph Valachi before the Subcommittee. On April 4, 6, and 12, 1989, the Subcommittee continued its examination of Federal efforts, against organized crime and, specifically, labor racketeering, in public hearings on the "Federal Government's use of Trusteeships Under the RICO Statute."

The two hearings were based on an investigation by the Subcommittee Majority staff under the direction of Senator Sam Nunn, Chairman, with the concurrence of Senator William V. Roth, Jr., the Ranking Minority Member.

The hearings were held under the authority of Senate Resolution 66, adopted February 28, 1989, and Senate Resolution 381, adopted February 26, 1988, both of which direct the Subcommittee to examine all aspects of crime and lawlessness within the United States that have an impact upon or affect the national health, welfare, and safety, and to conduct investigations of labor racketeering and organized criminal activities and to identify the persons involved.

While the April 1988 hearings focused on the nature and structure of La Cosa Nostra (LCN) families operating in the United States, testimony in those hearings laid the predicate for the Subcommittee's later review of the Government's use of the civil provisions of the Racketeer Influenced and Corrupt Organizations Act (RICO) in the April, 1989, hearings. For example, both FBI Director William S. Sessions and representatives of the U.S. General Accounting Office (GAO) testified in 1988 that the Government's use of the civil provisions of RICO is essential to free certain union locals and industries from the longstanding influence of La Cosa Nostra.

Building on that testimony, Chairman Nunn noted, in opening the 1989 hearings, the growing importance of civil RICO suits in the Federal effort against organized crime:

> The implementation of trusteeships under civil RICO is no longer a novel, one-time experiment. It is quickly being recognized as an extremely valuable part of effective law enforcement.

II. FEDERAL LAW ENFORCEMENT EFFORT AGAINST LA COSA NOSTRA

In 1951, Senator Estes Kefauver, chairing the Special Committee to Investigate Organized Crime in Interstate Commerce, declared that a nationwide criminal cartel, called the Mafia, operated in many large cities throughout the United States. In 1957, local authorities reinforced that conclusion by disclosing that at least 75 major organized crime leaders had gathered at the infamous Appalachian, New York, meeting. From 1955 to 1961, Senator John L. McClellan—first as Chairman of this Subcommittee investigating the infiltration of organized crime into labor and businesses [1]—presided over congressional hearings further confirming that this criminal cartel was in fact operating within the United States.

Following the McClellan hearings, then-Attorney General Robert F. Kennedy began a concerted Federal law enforcement effort against organized crime. In 1963, law enforcement achieved a major breakthrough with the defection and testimony of Joseph Valachi, a soldier in the Genovese family in New York City. It was in Valachi's testimony before the Senate Permanent Subcommittee on Investigations that the American public first heard the term

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[1] In 1957, the Select Committee on Investigation of Improper Activities in the Labor or Management Field was formed, with Senator McClellan as its Chairman. Members were apppointed to serve on the Select Committee from the Permanent Subcommittee on Investigations and the Labor and Public Welfare Committee.

"Cosa Nostra," or "our thing." Valachi's testimony described the secret criminal cartel's illicit empire, its private armies, its code of conduct, and its ruling body, known as the Commission. Organizational charts were displayed in the hearing room, exhibiting the structure of the LCN families and their membership hierarchies, from the "boss" to the "soldier."

In its 1988 and 1989 hearings, the Subcommittee attempted to assess the effectiveness of Federal law enforcement efforts against the LCN in the 25 years since Valachi had testified. During that timeframe, the evidence suggested three different phases in the development of the Federal organized crime program. The numerous successful prosecutions of LCN families in recent years have come only after a long process of development in the Federal effort against organized crime.

Spurred by Valachi's testimony, there was an effort at the legislative and agency levels in the late 1960's and early 1970's to muster available Federal resources against the LCN organized crime families. Congress created legal tools to aid the effort, such as the Omnibus Crime Control and Safe Streets Act of 1968, and the Organized Crime Control Act of 1970. Together, these statutes gave law enforcement a host of new investigative tools, including electronic surveillance, testimonial immunity, and the Racketeer Influenced and Corrupt Organizations Act (RICO). Contemporaneously, the Justice Department created its Organized Crime Strike Force Program, bringing together senior investigators and career prosecutors to build criminal cases against organized crime figures.

This rush of activity was followed by a period of relatively limited progress for much of the 1970's. Thomas Sheer, Assistant Director in Charge (Ret.), and James Kossler, Supervisory Special Agent, FBI, testified that in 1980, the FBI New York Field Office conducted a self-analysis and concluded that their intelligence base on organized crime was inadequate and that a new overall plan or strategy was necessary to combat the problem effectively. Probably because of the novelty and complexity of the RICO statute, prosecutors had been uncomfortable with its provisions and had made little use of the statute in bringing criminal prosecutions. Sheer testified that the RICO, statute was "the most comprehensive and powerful tool we had, but unfortunately, for over a decade that tool remained the least used of weapons in our arsenal."

It was not until the late 1970's and early 1980's that there was evidence of significant progress and breakthroughs in the Federal attack on organized crime. For exazmple, in 1978, the FBI successfully combined the use of RICO and a comprehensive industry-wide approach in UNIRAC, a nation-wide and multidivisional probe of corruption and criminal activity within the maritime industry. Evidence gathered in the UNIRAC probe suggested that the LCN controlled large segments of the International Longshoremen's Association (ILA) and resulted in numerous convictions.

Building on the success of UNIRAC, the FBI New York Field Office developed a plan, incorporating what they termed "the enterprise theory of investigation," for an all-out, simultaneous assault on the hierarchy of the five New York-based LCN families. The plan's long-range objective was to reduce the influence of these families by focusing on their activities as criminal enterprises. Spe-

cial Agent Kossler explained the significance of the "enterprise theory of investigation":

> So the idea is not to look at the individual criminal act by an individual on a specific day, but to look at the totality of the criminality and the size and scope of the enterprise that approves that criminal activity. Therein lies a great deal of change about how we approach the attack on organized crime.

The new FBI plan became operational in 1981, when a massive investigation was launched against the Bonanno family, using information from the Miami, Tampa, and Milwaukee Field Offices, as well as from numerous wiretaps. That investigation ultimately led to a number of convictions of organized crime figures and associates and is considered to have devastated the Bonanno family. The key to the success of this approach was the sustained dedication of resources and effort on the part of law enforcement, coupled with the strong lines of communication maintained between the investigators and the prosecutors.

Similar investigative efforts against the other four families, Genovese, Gambino, Colombo, and Luchese, disclosed that these families controlled segments of the Laborers' International Union of North America; the Hotel Employees and Restaurant Employees International Union; the International Brotherhood of Teamsters; and the International Longshoremen's Association, and affected such a wide array of industries as construction, trucking, poultry, food distribution, air freight, gasoline and oil, and carting.

Despite the massive scope of the problem, by mid-1983, it was clear that the New York investigative program against the LCN was faltering because of a lack of available FBI resources. To solve this problem, a task force was created, drawing manpower from the New York State Police Department, as well as other Federal, State, and local law enforcement agencies. In addition to extra manpower, the task force approach added immeasurably to the intelligence base with the influx of street-wise, born-and-bred New Yorkers from the police force.

In the past 5 years, the New York task force has been responsible for the convictions of four family bosses, three underbosses, three consiglieres, 19 capos, and 15 soldiers of La Cosa Nostra. From the inception of the enterprise theory of investigation through March 31, 1987, 1009 LCN members and associates [2] had been convicted.

This same task force approach was used successfully in the Philadelphia area, as described by Edward S.G. Dennis, Jr., then-United States Attorney for the Eastern District of Pennsylvania:

> In April 1982, as a result of the extraordinary series of LCN-related murders following the death of Angelo Bruno, the Philadelphia Strike Force, the FBI, and the Philadelphia Police Department formed a Homicide Task Force consisting of FBI agents, police officers and prosecutors devoted to investigating and solving the various murders.

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[2] The FBI defines associates as nonmembers used by the LCN in their illegal activities.

Currently, 18 of the estimated 50 members of the Philadelphia LCN family are incarcerated.

Following the lead of these successful prosecutions, RICO, the enterprise theory of investigation, and task force efforts were adopted in other Federal investigations against the LCN across the country. In the late 1980's, some 15 years after Congress first enacted RICO, the full force of the statute against organized crime activities began to materialize. John C. Keeney, Acting Assistant Attorney General, Criminal Division, U.S. Department of Justice, described the impact of those efforts:

> We have scored tremendous victories against organized criminal groups over the past few years as a result of a national offensive that has been systematic and sustained. Through an extraordinary series of prosecutions across the country, the mob leadership in our major cities has been crippled. Boston, Buffalo, Chicago, Kansas City, Cleveland, Los Angeles, New Orleans, New York, Philadelphia—all have seen La Cosa Nostra (LCN) bosses, underbosses and capos convicted, sentenced to long prison terms and stripped of their assets.

Keeney pointed out that the LCN is now on the defensive, heard on electronic intercepts lamenting the RICO statute and their increasing inability to spend or conceal the proceeds of their crimes. As further evidence, he cited law enforcement success in breaking "Omerta," LCN's code of silence, thus yielding to the Government an unprecedented number of informants and insider witnesses, and their unique knowledge of the inner workings of the organization.

Finally, Keeney singled out the Organized Crime and Racketeering Section's Strike Forces for their success:

> . . . [T]he mission of the Strike Forces is to disrupt organized criminal enterprises by imprisoning their leadership and forfeiting their assets. Using the most sophisticated and intrusive investigative techniques, including electronic surveillance, undercover operations and agressive use of the Federal grand jury and the Federal immunity statute, they are dedicated to building comprehensive Racketeer Influenced and Corrupt Organizations (RICO) cases against entire crime families.

III. CHANGES IN FAMILY STRUCTURE SINCE VALACHI

For these hearings, the Subcommittee, with the assistance of the U.S. General Accounting Office (GAO), produced a series of graphic charts exhibiting the hierarchy of the 25 LCN families, as well as the membership lists of the five New York families. The charts were prepared in consultation with numerous Federal, State, and local law enforcement agencies, and rigid criteria were met in each identification.

Prior to identifying anyone as a member of LCN, the Subcommittee required that a major law enforcement agency or State or regional crime commission advise that the person had met its internal criteria for public identification, or identification to another enforcement agency, and that two or more of those agencies, or reli-

able cooperating or undercover law enforcement sources, identify independently the person in question as a member of La Cosa Nostra.

When compared to the charts prepared for the Valachi hearing of 1963, it is evident that the corporate structure of the LCN has remained virtually unchanged. Each family retains the positions of "boss," the head of the family; an "underboss," who is second-in-command; a "consigliere," a veteran member who acts as adviser to the boss; and the "capo-regime," captains who are in charge of the "soldiers," the rank-and-file members of the LCN. The 1988 charts also confirm testimony that actual members of the LCN must still be of Italian descent.

While significant changes have occurred in membership and leadership position, the charts suggest that if not murdered or convicted, an LCN member has job security and chance for advancement. Of the five New York family bosses, three—Vincent Gigante, Phillip Rastelli, and Carmine Persico—were identified as members by Valachi.[3] The current Luchese boss, Vittorio Amuso, was jailed during the Valachi period and was not listed. In the Gambino family, the current boss, John Gotti, born in 1940, does not appear on the Valachi chart. His underboss, however, Joe Armone, was identified by Valachi as a soldier.

In families in other areas of the country, the charts show that time and attrition move the soldiers to leadership positions. In Tampa, Francisco Diecidue, a soldier in 1963, listed officially on the current chart as the underboss, is probably now the acting boss, following the death, in 1987, of boss Santo Trafficante, Jr. In Chicago, the current boss, Joe Ferriola, was listed as a soldier in the Valachi hearing.

The disappearance of some of those named by Valachi is a measure, in some cases, of the success of law enforcement effort. Joey Aiuppa, who had risen from soldier to boss in Chicago, was convicted in 1986 *United States* v. *DeLuana*, as testified to by FBI Special Agent Robert Davenport. Gennaro Angiulo, a senior-level member of the Boston family in Valachi's time, was convicted in 1986 in *United States* v. *Angiulo*, as described in the testimony of FBI Special Agent James Ahern. "Fat Tony" Salerno, a soldier on the 1963 chart of the Genovese family, shared power with Gigante from the early to mid-1980's. Convicted with other major LCN figures in 1986 and 1988 on racketeering charges, he is currently serving a 100-year sentence. Judge Sessions testified that since the implementation of the enterprise theroy of investigation and the task force approach in 1981, the FBI has brought to conviction 19 bosses, 13 underbosses, 4 consiglieres, and 43 capos, from 20 different LCN families.

A number of the LCN members identified by Valachi were victims of violent, sensational murders. Joe Colombo was gunned down at an Italian-American rally in 1971. Hearing witness Tommaso Buscetta suggested that Colombo was killed because his public appearance brought unwanted attention to the LCN. The suspected gunman, Joseph Gregory Gallo, was himself shot to

[3] Persico was mistakenly identified by Valachi as a Genovese soldier.

death at a New York City restaurant in 1972. Thomas Eboli, then acting boss of the Genovese family, was shot to death in 1972. Carmine Galante, boss of the Bonanno family, was murdered at lunch in a restaurant in 1979. Paul Castellano, boss of the Gambino family, was murdered in the street in 1985.

The charts, along with the testimony, show relative stability in the number of families, with only a few becoming inactive, or nearly so, since the 1960's. At least three families, Dallas, Texas; Madison, Wisconsin; and Tucson, Arizona; have become inactive following the deaths or incapacitation of the bosses. Significantly diminished in criminal activities and influence are the Rochester, New York, and Cleveland, Ohio, families, due to successful, significant prosecutions of membership. In several families where the boss and senior leadership are jailed or under indictment, such as the Los Angeles, Philadelphia, and New York Bananno families, business is currently conducted either from prisons or with interim acting bosses, with the ultimate leadership structure still in flux.

Also apparently stable is the territory covered by LCN. There are minor shifts in borders and allegiances, but no new families are reported in areas not previously infiltrated by the LCN, with the exception of Tucson, where New York Bonanno family boss Joe Bonanno retired and began a new family in the mid-1960's.

Despite law enforcement efforts and successful prosecutions, the charts suggest that LCN ranks continue to be replenished with new members, as illustrated by the large numbers of soldiers currently listed for the five New York families. Valachi, himself a Genovese family member, named 112 soldiers in that family, as well as 54 Gambino, 44 Luchese, 24 Colombo, and 16 Bonanno soldiers. Current charts confirm 193 Genovese, 176 Gambino, 102 Luchese, 83 Colombo, and 94 Bonanno soldiers. Law enforcement authorities report that actual membership is thought to be much higher.

IV. INSIDER WITNESSES DESCRIBE CHANGES IN LA COSA NOSTRA

Following in the tradition of the Valachi hearing, the Subcommittee received testimony from a number of witnesses who had personal knowledge of La Cosa Nostra. The Subcommittee sought their views on the extent to which La Cosa Nostra, as Valachi had known it, had survived not only the law enforcement onslaught of the 1980's but also the many changes in American society over the last 25 years.

Tommaso Buscetta, a former member of the Sicilian Mafia, testified that over the years he had seen money, drugs, and greed corrupt and destroy the Cosa Nostra code of honor and loyalty to the families. In Buscetta's view, the Italian Mafia had evolved, from an organization designed to protect the weak from a corrupt Government, to one that now exists only for the power and personal benefit of its members. Violent power struggles within the organization cost Buscetta the lives of his brother, two sons, one brother-in-law, three nephews, and one son-in-law and prompted his decision to break the code of silence and cooperate with law enforcement authorities, both in Sicily and the United States. Buscetta is the first member of the Sicilian Mafia to do so.

Although Buscetta worked principally in Italy, he had spent time in the United States with members of the New York LCN families. Buscetta testified that La Cosa Nostra in the United States began, with the approval of the Sicilian Mafia, as a way of protecting early Italian immigrants against other, more firmly established immigrant groups. Today, La Cosa Nostra and the Sicilian Mafia are separate organizations, but they coordinate on illegal drug activity, which, according to Buscetta, is the Mafia' main source of income, both in Sicily and the United States. The Sicilian Mafia, for example, runs heroin and cocaine into the United States with the complicity of La Cosa Nostra. According to Buscetta's testimony, members from one country may not operate in the other, without the express approval of the local family.

Buscetta described how, in his view, illegal drugs were destroying the "honor" of the Sicilian Mafia:

> Before, the Mafia would have nothing to do with drugs. Drugs brought too much attention from the authorities, too much heat. Now, drugs were the main part of the Mafia's business, and everyone in the Sicilian Mafia was rich because of it. The tobacco smuggling, which had been the life line of Mafia business, had been abandoned in favor of drugs.
>
> Along with the drugs had come more money, more greed, more violence, and less honor. In the period 1981–83, there were over 400 Mafia killings in Palermo. I began to realize that drugs had changed everything, the family loyalties and code of respect that I had known as a Mafioso were quickly becoming things of the past.

Joseph Pistone, a former FBI agent, testified that he had spent 6 years working undercover as Donnie Brasco, a small-time jewel thief and burglar. As Brasco, Pistone successfully infiltrated both the Colombo and the Bonnano LCN families, providing law enforcement authorities with extensive evidence of their criminal operations. Pistone's testimony subsequently resulted in more than 200 indictments and 100 convictions of organized crime members across the country.

Reflecting on his years with the LCN, Pistone, like Buscetta, noted significant changes in organized crime since the days of Valachi, including the increasing involvement of LCN members in the illegal drug trade:

> With each generation the Mafia subculture moves closer to mainstream America. The oldtimers who exhibit the strongest values of the Mafia are aging and slowly dying off. They are being replaced by younger wiseguys, 25 to 35 years of age, who do not possess the same strong family values. This is slowly Americanizing the Mafia and, with it, the strong attachment of kinship and honor.
>
> I continually heard the older members complaining about this phenomenon. They were concerned that the new members cared more about themselves than they did about the family or crew—"our thing" was turning into "my thing" within the Mafia, just as the larger American

> society is facing the new realities of the "me generation." As in the larger society, the Mafia subculture is also facing the problems of drug abuse. Although the older members have always dealt with the importation and sale of narcotics, very few were users. But what I noticed was that younger members were more and more likely to be "turning on" to the same drugs as their "straight" compatriots.

Pistone, however, does not believe that these changes will destroy the mob from within. Despite those changes and despite the many recent successful prosecutions of LCN members, he testified that:

> . . . [T]his in no way means the war is over and the Mafia is beaten. As I have stated before, there is a large pool of potential members and leaders just waiting to take over from those we convict. To a large measure, the rise in the prominence of Sicilians and other emerging groups who still maintain the older values and traditions in organized crime is indicative of the new wave of future criminal leaders starting to fill the vacancies.
>
> We cannot to any degree slow down our assault upon organized crime. If we do, we will lose our greatest opportunity in 25 years to control this problem. My biggest fear is that we will consider stopping too soon in this effort. Now is not the time, Senators, for the Government to declare victory and sue for peace.

Angelo Lonardo, former underboss of the Cleveland Cosa Nostra family, agreed in his testimony that greed had drawn younger members of La Cosa Nostra to the narcotics trade and that these members lack the discipline and respect that made the organization as strong as it once was. Vincent Cafaro, a longtime member of the Genovese family and close associate of "Fat Tony" Salerno, told the Subcommittee that he considered many of the younger LCN members "renegades," who were "not as disciplined as we are, the oldtimers." By contrast, Cafaro praised the traditional discipline and rigid controls on LCN members, testifying that soldiers had been required to check with their capos at least once a week and to clear any "score," or illegal activity, ahead of time with the capo. Lonardo, too, testified about the rigidity of the LCN infrastructure, stating that the Cleveland family answered to the Genovese family in New York, which represented Cleveland's interests at Commission meetings.

Taken together, the testimonies of Lonardo and Cafaro confirmed that the LCN continues to profit considerably from its traditional spheres of criminal activity, gambling, and labor racketeering. Lonardo detailed the LCN's Las Vegas casino skim operation, which began when Allen Glick obtained a loan from the Teamsters pension fund to buy the Stardust, Fremont, and Desert Inn casinos. In exchange for the loan, Glick gave the Kansas City, Cleveland, and Milwaukee LCN families a "skim" of casino profits. Cafaro described the importance of extensive "numbers" operations to the New York LCN families, claiming he made as much as $2 million a

year running the West Harlem numbers business for the Genovese family.

As for the importance of labor racketeering, Lonardo testified that LCN leadership in Chicago and New York were responsible for the election of Roy Williams and Jackie Presser to the presidency of the International Brotherhood of Teamsters, thus insuring that pension fund loans and other union favors would continue. Cafaro stated bluntly:

> We got our money from gambling, but our real power, our real strength, came from the unions. With the unions behind us, we could shut down the city, or the country for that matter, if we needed to get our way. . . . Most importantly, in all cases, we got power over every businessman in New York. With the unions behind us, we could make or break the construction industry, the garment business, the docks, to name but a few.

Cafaro discussed in detail LCN control of New York area industries through the unions, including hotel and restaurant employees, garage and parking attendants, ambulance drivers, teamsters, garment workers, longshoremen, and concrete and construction industry workers. In exchange for exclusive rights on construction jobs, Cafaro testified that New York-area concrete companies routinely paid kickbacks to the LCN families.

Most disturbing was Cafaro's assessment of the Government's efforts in the late 1970's UNIRAC probe of corruption on the waterfront. Even though major International Longshoremen's Association (ILA) leaders were convicted and jailed for long sentences, according to Cafaro,

> all of that really changed nothing on the docks. . . . Despite all the prosecutions, our control of the waterfront was firmer than ever.

At the time of the hearing, Cafaro testified that, despite the successful Government prosecutions, LCN members Doug Rago still controlled the docks for the Genovese family, making $400,000 to $500,000 a year from union racketeering activities.

V. WITNESSES AGREE THAT DESPITE LAW ENFORCEMENT SUCCESSES, LA COSA NOSTRA THRIVES

All of the witnesses agreed that in spite of the Government's recent successes against LCN, the threat is not ended. In their view, the Government must follow its successes with further criminal investigations, coupled with the increased use of civil RICO and the innovative application of investigative techniques.

Acting Assistant Attorney General John C. Keeney testified that although LCN street operations are still ongoing, Government prosecutions have removed several levels of leadership from LCN families across the country. By continuing to target the leadership level, Keeney believes that the investigations will inevitably start to diminish the money-making aspects of LCN. According to Keeney, the Government is proceeding in the right direction, but the job is not yet complete.

FBI Special Agent James F. Ahearn cautioned the Government about being too optimistic, its recent successes against LCN notwithstanding. He stated:

> The LCN in New England is in a state of regression for the first time in 70 years. However, the history of the Mafia in Sicily would tell us that this is not enough to claim victory. Our successes should only serve to convince us how much more there is to be done. There is much about the LCN that we do not know, particularly in the areas of finance, legitimate business and corruption, or how they will replenish their ranks from a community of more educated people who may choose a different way of life.

Commissioner James H. Manning, Jr., of the Pennsylvania Crime Commission, commented that LCN is in the process of restructuring itself, as a function of the Government's prosecutorial successes. Promotions are rapid, resulting in a younger, inexperienced, and more violent group which is now taking control of the families. Ronald Goldstock, Director, State of New York Organized Crime Task Force, and James R. Zazzali, Commissioner, New Jersey State Commission of Investigation, agreed, noting that the future structure and membership of organized crime will be substantially different from what it was in the past. Goldstock believes that organized crime can never be eliminated, but its power will be greatly reduced. He and Zazzali testified that emerging groups will not supplant LCN, but will have a market share of illegal activities traditionally associated with LCN.

James Kossler, Supervisory Special Agent, FBI, stated that the FBI, as well as the Government in general, still have much work to do. The New York LCN families, although in disarray, still exist and continue to function. Kossler believes the Government must continue a coordinated, carefully planned law enforcement and prosecutive effort, employing the enterprise theory of investigation, as well as civil RICO and other available civil remedies.

David Williams, Director, Office of Special Investigations, U.S. General Accounting Office, testifying on the effectiveness of Federal law enforcement efforts against the LCN and on the future course of those efforts, closed his testimony with seven recommendations for future Government action:

> (1) Careful strategic planning, establishing objectives, assigning responsibility and allocation of the finite resources, possibly expanding the existing National Organized Crime Planning Council to so function.
>
> (2) Sophisticated and imaginative restructuring of the industries most vulnerable to LCN influence, such as the waterfront, land transportation, construction, and garment manufacturing, to eliminate the presence of organized crime.
>
> (3) Increased use by the Department of Justice of new legislative tools, such as the new Money Laundering Control Act, directed at the money-laundering services used by the mob.
>
> (4) Prompt action on the part of the Immigration and Naturalization Service (INS) to address the threat of increased influx of organized criminal groups. For example, there are re-

ports that organized criminal groups are now fleeing and planning to flee Hong Kong, in anticipation of the reversion of control of that territory to mainland China in 1997. As a further example, the "Maxi Trial" in Sicily is causing Mafia members to consider immigrating, because of fear of prosecution. Improved relations with police of other nations will facilitate INS enforcement.

(5) Increased civil and criminal enforcement to remove organized crime influence from labor unions, targeting particularly those unions named in the President's Commission on Organized Crime as mob-infiltrated: the Laborers' International Union of North America, the Hotel Employees and Restaurant Employees International Union, and the International Longshoremen's Association.

(6) Continued pursuit of knowledge and understanding of LCN recruitment and induction procedures.

(7) Continued focus of public attention on La Cosa Nostra and its criminal activities to increase public awareness of the realities of the mob's operations, including public and business corruption.

Finally, while recognizing that that point has not yet been reached, FBI Director William S. Sessions testified that:

> By taking full advantage of the existing investigative opportunities, expanding the national intelligence base, and implementing a comprehensive organized crime strategy, it is possilbe to remove LCN as a significant threat to society.

VI. WITNESSES DEBATE FEDERAL GOVERNMENT'S USE OF THE CIVIL PROVISIONS OF RICO

At the 1989 hearings on "Federal Government's Use of Trusteeships under the RICO Statute," the Subcommittee examined a relatively recent and controversial development in the Federal law enforcement effort against organized crime. Rather than relying solely on the success of criminal prosecutions, the Justice Department has, in a growing number of cases, sought to impose court-monitored trusteeships over unions and other entities, which have for some time been influenced or controlled by the LCN.

In addition to establishing criminal penalties, the RICO statue at 18 U.S.C. 1964(a)–(b) authorizes the Attorney General to seek civil remedies, including injunctions and other equitable relief, to prevent and restrain violations of its provisions.

Specifically, the statute provides for the divestiture of any interest in an enterprise, as well as the imposition of reasonable restrictions on the future activities or investments of an individual. Most significantly, section 1964(a) permits the court to order the dissolution or reorganization of any enterprise. It is this very broad equitable relief that the Government has relied on in seeking court-appointed trusteeships under the civil RICO statute, where there is evidence that a business or labor union has been controlled by the LCN.

Under section 1964(a), the Government has asked the court to remove the current business or union leadership and replace it

with a court-appointed trustee, whose objective is to remove the criminal influence from the entity. In the case of a union, the Government's professed goal has been the ultimate restoration of union democracy, free of LCN corruption and intimidation, so that the rank-and-file members can freely elect their leadership.

Because each trusteeship is tailored by the court to meet individual union or business needs and to address specific problems of corruption, the nature of the trusteeships imposed can vary greatly. In the most extreme case, the trustee may be responsible for day-to-day operations and reports directly to the court. In other instances, the court may elect to leave the existing leadership of the organization in place, but grant broad powers to a court-appointed official to monitor their activities.

In short, given the broad language of the statute, the exact nature of the "reorganization" of the entity is left to the discretion of the court.

As Chairman Nunn noted at the hearing, this type of suit by the Government is a dramatic departure from traditional law enforcement techniques:

> In bringing these types of cases, the Government has clearly crossed over into a new frontier in law enforcement, injecting itself into the direct supervision of the day-to-day operations of labor unions, and under the broad terms of the statute potentially any other commercial entity, including businesses. Understandably, this new Government role has generated considerable controversy and a host of still unanswered questions. . . .

Testimony at the Subcommittee's hearings reflected the ongoing debate on the imposition of trusteeships under RICO. While representatives of the Federal Government and the court-appointed trustees supported the use of civil RICO, witnesses representing organized labor criticized the Government's use of this remedy as undemocratic and anti-labor.

Representatives from the Department of Justice, the Department of Labor, and the Federal Bureau of Investigation all maintained that the imposition of trusteeships under RICO is not only justified, but, in fact, necessary in cases where LCN influence and control of a union or other entity is so institutionalized that it survives despite the successful prosecutions of individuals. In those cases, these witnesses suggested that a court-monitored trusteeship is the only way eventually to restore union democracy and free market competition. The FBI cited as an example the UNIRAC investigation, where, as confirmed by Vince Cafaro's testimony in the 1988 hearings, massive criminal investigation removed a large number of individual criminals from the International Longshoremen's Association (ILA) and the waterfront industries but failed to end LCN control of the industry.

Government witnesses testified that civil RICO suits are brought only in extreme cases, and only after a cautious and thorough review of the decision at the Department of Justice. Edward S.G. Dennis, Jr., testifying in 1989 as Assistant Attorney General, Criminal Division, U.S. Department of Justice, suggested that a civil RICO suit is "sought only as a last resort for the purpose of

remedying usually a long pattern and an ingrained pattern of racketeering within an organization." Benito Romano, United States Attorney for the Southern District of New York, testified that, in deciding to file a civil RICO suit against the International Brotherhood of Teamsters (IBT), the Government considered the fact that:

> [S]ince 1970, the Government has brought more than 200 cases involving Teamsters-related corruption, and those cases have resulted in more than 340 criminal convictions. Yet the Teamsters leadership did nothing to remedy or even investigate that corruption, despite their obligation to do so under Federal labor laws and their own constitution.

Finally, Dennis testified that the Justice Department does not view civil RICO as a "magical antidote" to the problems presented by organized crime's influence in labor unions or industries. Rather, the Department believes it is a tool which, when used in concert with criminal RICO and other civil remedies, can be an effective measure to alleviate criminal influence in an entity. It is probably most effective when used in the wake of a successful criminal RICO prosecution.

The majority of Government civil RICO actions seeking trusteeships have targeted labor unions, with one notable exception: the Fulton Fish Market, a commercial entity. As a result, some have suggested that civil RICO suits are used unfairly to target only labor unions. On that point, Government witnesses testified that civil RICO suits will be filed in non-union situations in the future. Romano noted the likelihood of applying civil RICO in cases of corrupt financial institutions, while Dennis stated that the Department of Justice expects to expand its use of civil RICO to other areas, such as defense procurement fraud.

In contrast to the Government witnesses, Lane Kirkland, President of the AFL–CIO, sharply criticized the Government's use of civil RICO to "take over and administer" labor unions:

> We believe granting the Government that power is wrong as a matter of principle. Government-dominated trade unions, no matter what the excuse, are contrary to every precept of freedom of association. That freedom's office is to permit the member of each of the diverse groups in our society to join together, independent of the State, to further their interests as they themselves define those interests. Government control of a private association is thus fundamentally illegitimate in that the officials who exercise control are not drawn from, are not selected by, and are not responsible to the association's members.

On the other hand, Kirkland reiterated his support for strong Government enforcement efforts against individual criminals in the labor union movement:

> I believe that the Government should and does and rightfully has the power to use a variety of tools that are appropriate only to Government, to investigate, to find the facts, and to build a case against miscreants in the trade union movement or anywhere else. We strongly and fully support that. We regard that as an asset to our society, a

> necessary asset given the foibles and the weaknesses of human beings and the prevalence of greed and avarice in our world.
>
> I do not believe that that police power should extend to control, to arbitrary control of free, voluntary organizations by the imposition of trusteeships over all of their affairs.

Kirkland joined IBT President William J. McCarthy in recommending to the Subcommittee three changes in the civil RICO provisions. First, that RICO be amended to preclude the

> . . . wholesale removal of a union's elected officers and their replacement for an indefinite period, by a court-appointed trustee.

Second,

> . . . that the law be made clear that such a trusteeship, in any form, not be imposed unless and until there has been a full and final evidentiary hearing and the Government has demonstrated, by clear and convincing evidence, that the interests of union members cannot be protected by any less intrusive means.

And third,

> . . . that RICO be clarified so that no union is precluded from using its resources to hire legal counsel to defend itself or its officers.

While Kirkland was adamant in his refusal to support the Government's use of the trusteeship mechanism, he did not rule out support for less extreme action by the Government. Lawrence Gold, General Counsel for the AFL-CIO, testified that, in extreme cases, the Government's use of other, less drastic, civil remedies, would be acceptable:

> We note that the Government overseeing the selection of the replacements of the people who have been deposed makes sense in that situation. The Landrum-Griffin Act in far less serious situations permits the Government to have a role in facilitating the exercise of membership rights. There are negative injunctions; there is monitoring in that situation which would help the membership express its views and its rights. . . . There are a variety of supplemental civil actions that the Government can take which do not put the Government in charge of running the organization but still allow the Government to protect it.

In response to a suggestion from Chairman Nunn, Kirkland also indicated his willingness to engage in a "more cooperative interchange and working relationship" with Government enforcement agencies. Though such communication has been lacking in the past, representatives of the Department of Justice, the Department of Labor, and the FBI agreed, in their testimony, that this type of exchange with organized labor would be fruitful. Chairman Nunn urged them to make every effort to initiate an ongoing liaison with the AFL-CIO.

Edwin Stier, trustee, International Brotherhood of Teamsters Local 560, Union City, New Jersey, testified that the Government and organized labor have much to learn from his experience at Local 560, and he expressed the hope that both parties would use that experience in a partnership to remove corruption from organized labor. Stier underscored the value of the type of permanent liaison suggested by the Chairman:

> A liaison between the Government and organized labor that provides an interchange of information, expertise, and points of view would enhance the ability of the Government to develop a coherent policy guiding the use of the civil provisions of RICO. It would also provide organized labor with an opportunity to rid itself of allegations of pervasive corruption.

VII. GOVERNMENT'S USE OF CIVIL RICO IS AN EVOLUTIONARY PROCESS

The civil provisions of the RICO statute offer the Government extraordinary remedies and, like the criminal provisions of the statute, proved complex and difficult to master. As a result, the Government did not make use of the civil provisions till some 12 years after their enactment. Moreover, the testimony received by the Subcommittee suggested that the Government is still in the learning, or evolutionary, stage of using civil RICO and that, as a result, there are some issues regarding its use which may merit additional study and/or action by the Department of Justice.

First, the witnesses agreed that the Government has to date used the statute sparingly. Given the sweeping breadth of the remedy, this reluctance to use the statute, except in extreme cases, may be appropriate. It has, however, resulted in a limited amount of experience in its use and in accusations that it is being used discriminately. Civil RICO cases have been filed only in a relatively limited geographical area on the Eastern seaboard and, in the overwhelming majority of cases, against labor unions, as opposed to other types of business or commercial entities. The Subcommittee examined three trusteeships, two administratorship, and one decreeship that have been imposed as a result of civil RICO suits filed by the Government. They are:

(1) IBT Local 560, Union City, New Jersey (Newark Organized Crime Strike Force) (trusteeship, imposed following trial);

(2) IBT Local 814, Long Island City, New York (Eastern District of New York) (trusteeship, imposed pursuant to a consent judgment);

(3) Laborers' International Union of North America (LIUNA) Local 6A, New York, New York (Southern District of New York) (trusteeship, imposed pursuant to a consent agreement);

(4) Fulton Fish Market, New York, New York (Southern District of New York) (administratorship, imposed pursuant to a consent judgment);

(5) Roofers Union, Local 30/30B, Philadelphia, Pennsylvania (Philadelphia Organized Crime Strike Force) (decreeship, imposed following court finding, at injunction hearing, at which criminal RICO convictions were admitted as *res judicata*); and

(6) IBT International, Washington, D.C. (Southern District of New York) (administratorship, imposed pursuant to a consent judgment).

Second, some have suggested that the lack of civil RICO cases in other parts of the country and in corrupt commercial entities indicates a lack of familiarity by prosecutors with this still-novel remedy. Government witnesses testified that this was, in fact, the case with the criminal RICO provisions for many years.

Assistant Attorney General Dennis testified that the Justice Department is taking steps to improve the effectiveness of its civil RICO program, including specialized training for prosecutors. He testified that the Department has a program in place for educating Government criminal and civil attorneys about the theoretical and practical issues under civil RICO. The Department has also distributed to all U.S. Attorneys Offices and Strike Forces a manual on the use of civil RICO, and has supported and contributed to an in-depth National Institute of Justice study of the Local 560 trusteeship. According to Dennis, it is now the Department's policy to consider

> . . . potential applications of civil RICO whenever we review a proposed RICO prosecution or any Strike Force prosecution.

Thirdly, there is some confusion about the specific standards by which the Department of Justice decides whether to file a civil RICO case in a given situation. Absent a clear definition of those standards, there may be concern that this extreme remedy will be used indiscriminately and unjustifiably by overzealous prosecutors.

Assistant Attorney General Dennis testified that every proposed Government RICO case, criminal or civil, is subjected to review by Organized Crime and Racketeering Section attorneys in Washington, "for adherence to the policy justification for using RICO." Citing the U.S. Attorney's Manual, Dennis testified that the Department has

> . . . strict written guidelines governing the use of RICO by all Federal prosecutors.

A review of the cited manual, however, reveals that those written guidelines speak only to the decision of whether or not to include criminal RICO charges in an indictment. The Justice Department's written manual on civil RICO discusses "considerations" for deciding when to use civil RICO, but they are confined to legal advantages or disadvantages for the prosecutor, i.e.: differences in the burden of proof, discovery, venue, etc. The manual's brief general discussion of "policy considerations" contains two basic directives to prosecutors:

> . . . [C]ivil RICO, like criminal RICO, should not be used lightly. . . .

and

> . . . [W]ith respect to actions for injunctive and other equitable relief, such actions should only be undertaken when a substantial benefit to the Government will result if the action is successful.

During the course of the hearing, the Subcommittee pressed representatives of the Department of Justice to articulate specific standards which guide their decision to use the civil RICO statute. U.S. Attorney Benito Romano described the standard this way:

> It is a very difficult standard to articulate, except, as I indicated earlier, we think it should be available as an option. Obviously, it applies in all circumstances to legitimate enterprises; that is to say, an entity that is an otherwise lawful entity.
>
> And the kinds of things that we look for before we consider the civil RICO approach is a history of systemic corruption where the normal mechanisms within the institution cannot with any confidence be relied upon. That is most easily documented and demonstrated where there have been a series of criminal prosecutions which have focused on one or another side of this entity.

Chairman Nunn raised the same issue with Assistant Attorney General Dennis in his testimony.

> Senator NUNN. If you had to state a summary standard for employing civil RICO and seeking trusteeships, how would you describe that standard?
>
> Mr. DENNIS. Well, I would say there were a number of factors that would inform me with regard to that. One is the length of time and the history of racketeering corruption that this particular organization has been subject to. So I would look at the length of time. If it was a matter of one or two years, I probably would not be inclined to pursue that. If it were a matter of a number of generations, then that would be different.
>
> Also, it would be a matter of the extent to which corruption and racketeering activities had permeated the organization. Is it a matter that involves just a few officials, even though they may be high-ranking, or it is something that has spread to really invade most of the organization and most of the power centers within it.
>
> The third thing would be my view of whether or not a trusteeship had a reasonable chance of succeeding, of making the situation better rather than making it worse.
>
> So, off the top of my head, I think those would be the three things I would look at.

VIII. THE VOICE OF EXPERIENCE: TRUSTEES DESCRIBE BOTH ACCOMPLISHMENTS AND SETBACKS

In an effort to assess the effectiveness of the civil RICO remedy once a trusteeship or other form of court-ordered monitoring is imposed, the Subcommittee received the testimony of those persons who had served as court-appointed trustees or administrators. Their firsthand experience revealed a mixture of accomplishments as well as setbacks in overseeing the operations of unions and, in the case of the Fulton Fish Market, a business entity.

A. The Local 560 Trusteeship

The International Brotherhood of Teamsters Local 560, Union City, New Jersey, was placed into a trusteeship after a court trial and exhaustion of all appeals, on June 23, 1986. Testifying before the Subcommittee was Edwin Stier, court-appointed trustee for Local 560, who described the conditions which, in his view, justified the imposition of the trusteeship:

> . . . [T]he Local 560 trusteeship was the first such effort by the Government to attempt to turn around a condition that had existed in a Teamsters union for approximately 30 years, a condition of continuous, unabating corruption. Successive prosecutions that reflected a pattern of racketeering in that union that was beyond the control of the Government through traditional law enforcement means. It was also either beyond the control of the membership or was a condition that satisfied some interests of the membership because they didn't seem to do anything about it.

Stier also pointed out the lack of previous action by the International or any other legitimate organized labor group to correct the problems that existed in Local 560.

According to Stier, the goals of the Local 560 trusteeship were threefold: first, to run the day-to-day affairs of the local in a manner that equitably represented the membership; second, to initiate efforts to investigate other allegations of corruption in the local; and, third, to initiate efforts to "democratize" the union or return it to the rank and file.

For approximately 30 years, Local 560 had been dominated by Anthony "Tony Pro" Provenzano, Nunzio Provenzano, and the Provenzano regime of the Genovese LCN family, who maintained their control through a pattern of violence and extortion. Stier maintained that these violent and intimidating practices conditioned the Local 560 rank and file to believe themselves powerless to bring about reforms in their own union:

> Perhaps most shocking was the discovery of just how little the members understood of their most basic rights and of their sense of powerlessness to bring about any political reform within the union.

In order to educate Local 560's rank and file, Stier started a newspaper, which provided information on union matters and served as a forum for the rank-and-file members.

After approximately 20 months of trusteeship, an election was held on December 6, 1988. For the first time since 1965, there were three slates of candidates. Sixty-two percent of the membership voted and elected a slate allegedly tied to the Provenzanos. In view of the election outcome, some have suggested that the Local 560 trusteeship was demonstrably a failure.

In response to that criticism, Stier pointed out that 2,000 members out of a total of 7,600 had voted against the winning slate, a sizeable minority, which he hopes will hold the new leadership accountable. On the other hand, Stier was reluctant to draw final conclusions about the acocmplishments of the trusteeship:

> At this point, nothing is certain beyond the very important fact that for the first time since 1965 the membership engaged in a political campaign that a majority of them has never experienced before. They raised issues that most members were afraid to raise in the past. They learned a great deal about the operation of their union and its pension and welfare funds, and about their rights as union members. Only time will tell whether the patterns of behavior that were so deeply ingrained in the union have been altered.

Although the elected officers are now running Local 560 on a day-to-day basis, as trustee Stier retains control of the union's pension and welfare funds.

B. The Local 814 Trusteeship

The International Brotherhood of Teamsters Local 814, Long Island City, New York, was placed into a trusteeship by consent judgment on October 8, 1987. The settlement required the Executive Board to resign, and the court named Arthur Eisenberg trustee to oversee the operations of the union and its benefit plans.

This civil RICO action was preceded by a criminal RICO action that proved longtime domination of Local 814 by the Bonanno LCN family. Longtime LCN associate and former Local 814 vice president Anthony Giliberti described for the Subcommittee how the Bonanno, Genovese, and Gambino LCN families had corrupted and looted Local 814. After years of working with the LCN, Giliberti was ambushed and shot nine times, on July 14, 1982. Having survived the shooting, he began cooperating with the Federal Government and entered the Witness Protection Program.

Giliberti testified that in Local 814 corrupt, LCN-controlled, union officers had routinely provided employers with men who worked for low pay and no benefits, in exchange for 5% of the contract price. He explained how the LCN had successfully controlled Local 814 through economic blackmail. If a member voiced dissent, LCN-controlled officers would either ensure that that dissident did not receive steady work, or would have the employer dismiss him. With such tactics, the LCN kept the membership in line and kept LCN associates in office.

Arthur Eisenberg, appointed trustee for Local 814, also testified before the Subcommittee. Eisenberg was unique among the appointed trustees in that his background is in labor law, as opposed to law enforcement: He spent most of his career with the National Labor Relations Board. He described the function of his trusteeship as one of oversight involving every facet of union activity, including collective bargaining.

The purpose of the trusteeship was to create a climate in the union which would permit the conduct of a free election for a new Executive Board within a year of the establishment of the trusteeship. To accomplish this, Eisenberg instituted a variety of educational programs to increase membership's awareness of their rights, with the goal of greater democratization and participation in the political process.

The Local 814 trustee was also tasked with the elimination of corruption within the union and its benefit plans. Eisenberg stressed that at the beginning of his trusteeship, the moving industry was facing a number of problems, and he focused on helping the union to survive as a viable institution.

In addition, Eisenberg revised the union newsletter and used it to educate the rank and file on the trusteeship and to transmit the message that he was there to help them. Even though he received a mixed response from the membership, an open and democratic campaign resulted in an election on February 8, 1989, resulting in a split between two slates. The election was contested and investigated by the Department of Labor, which found no irregularities and certified the results. Following this certification, in May, 1989, pursuant to the consent judgment, the trusteeship was dissolved.

Local 814 educational programs have been less than successful. Eisenberg felt the frustration of seeing only a minority of the rank-and-file members participate in these programs, noting that this attitude is not unexpected, given the long history of threats and climate of fear. Eisenberg is of the opinion that a trusteeship needs several years to be successful in altering a undemocratic climate and in changing the attitudes of the rank and file. Like Stier, he was reluctant to draw any final conclusions on the success of the trusteeship:

> We have had some comments about apathy of members, lack of time; it takes a long time to turn around members' attitudes after 15, 20, 25 years or more of mob control. I fully share that view.
>
> I just don't see how anybody, however capable and involved and committted you are, could come in in a year or a year-and-a-half and really get down and convince members that a new order has dawned and that you are now free to assert your rights with impunity; that no one is going to go out and beat your head in. I think a start has been made.
>
> * * * * * * *
>
> If I had to summarize briefly accomplishments, I am for trusteeships for whatever limited period it takes to start the process going. I am all for unions, I am all for democracy . . . . But in this particular situation . . . I think in the absence of control, in the absence of an effort by the Teamsters or the AFL-CIO—effort, inability, desire, or whatever—I think trusteeships are warranted.

C. The Local 6A Trusteeship

Local 6A and the District Council of Cement and Concrete Workers, Laborers' International Union of North America was placed into a trusteeship by consent agreement on March 19, 1987. The trusteeship followed the completion of criminal prosecutions establishing the Colombo family's longstanding domination of the cement workers' unions in New York City.

Eugene Anderson was appointed as trustee. The consent judgment removed some of the union and District Council officers, while allowing some to remain. This trusteeship oversees the union

officers, who, in turn, conduct the day-to-day affairs of the organizations, unlike the Local 560 and 814 trusteeships.

In his testimony before the Subcommittee, Anderson cited a number of problems with his trusteeship. He stated that the Local 6A and District Council trusteeship was hampered by the limited power given to the trustee under the negotiated consent agreement. The fact that some of the union and District Council officers were permitted to remain in office, created, in Anderson's view, the impression that the old regime was still in power. Anderson believes that this generated a reluctance on the part of the rank and file to speak out and resulted in the fact that in the first elections, held in late 1987, not one office was contested.

Anderson also testified that the lack of authority to operate the day-to-day affairs of the union deprived the trustee of regular contact with the membership, making it difficult to develop a level of trust. Without the trust of the rank and file, it was difficult for Anderson to convince a member to assume a leadership position or create a climate where the members believe the union belongs to them.

Finally, Anderson complained that his effectiveness as a trustee was hampered by inadequate funding, noting,

> . . . [M]y investigative powers are meaningless without the money or othr resources to conduct an investigation.

Since the treasuries of Local 6A and the District Council had been severely depleted by legal fees in the civil RICO action Anderson, recommended that

> . . . [F]uture trusteeships provide some mechanism by which Government resources are available to the trustee for investigation.

Despite these problems, Anderson believes that his trusteeship has had a positive effect on the union's current leadership. His role as "watchdog" has spurred them to follow proper union procedures and improve accounting procedures. He has found, "at least on the surface," no evidence of continued corruption, although he continues to note the problem of pervasive and entrenched corruption within the New York construction industry as a whole.

Given the limited nature of his trusteeship, Anderson was less than optimistic regarding its final outcome:

> The real success of my trusteeship can only be measured once the trusteeship ends. If corrupt influences proceed to infiltrate the union once again, the trusteeship will certainly have failed its objective. Given the nature of my trusteeship as previously discussed, I, unfortunately, would not give assurances that that objective would be met.

D. The Fulton Fish Market Administratorship

The Fulton Fish Market administratorship was established by consent judgment on April 15, 1988 and Frank H. Wohl was subsequently appointed administrator to serve for a term of four years. In contrast to the other civil RICO cases discussed, this administratorship was designed to monitor the operations of an economic entity, as opposed to a labor union. This administratorship is also

unique in that, under the consent judgment, it is funded by the Government, and not by the entity whose operations it oversees.

The Fulton Fish Market is the center of New York City's multi-million-dollar wholesale seafood industry and houses approximately 100 wholesale fish suppliers. Control of the market by organized crime dates from the 1920's through the Government's 1982 prosecution of Genovese family members for controlling the market through racketeering activity, including extortion, illegal labor payoffs, misuse of pension and welfare funds, and obstruction of justice.

Brian Carroll, assistant administrator, testified before the Subcommittee on behalf of the administrator. Carroll stated that in the consent judgment, the consenting defendants agreed to injunctions prohibiting the alleged racketeering acts and to the appointment of an administrator. Further, the injunctions limited the defendants' involvement in the market itself and prohibited illegal activities, such as extortion, loansharking, and gambling. In addition, default judgments were entered against three other defendants and the Genovese LCN family which permanently enjoined them from having any involvement with Local 359 (United Seafood Workers, New York, New York), or any business or entity directly or indirectly involved with the Fulton Fish Market. The judgments also prohibit them from participating in any way in the seafood business anywhere.

The administrator is responsible for ensuring compliance with the court-ordered injunctions and to accomplish the goal of eradicating the "influence and illegal business practices of organized crime in the Fulton Fish Market." In order to do so, the administrator had taken several steps.

First, he established the administrator's office near the market to enable his staff closely to monitor the market and to better ensure the defendants' compliance. Second, he assembled a small staff, consisting of an assistant administrator, three staff investigators, and support personnel. The assistant administrator and two of the investigators are former New York City Police officers, with background in organized crime matters; the third is an attorney with a background in financial investigations. By contrast to some of the other self-funded trusteeships, resources for staffing has not been a problem.

Third, he contacted approximately 1300 wholesalers, retailers, and shippers who engage in business in the market to advise them of the administratorship and to solicit their suggestions. Early responses from the industry have been positive. The administrator is also conducting a study of the rules and regulations of other urban fish markets. Finally, the administratorship has established liaison with New York City and Federal agencies to coordinate the enforcement of the court order.

Since the Fulton Fish Market administratorship is still relatively young, the administrator could not yet assess its probability for ultimate success. While he is encouraged by such things as a decrease in fish theft and an increased oversight role by the City of New York, Carroll did confirm to the Subcommittee the continued influence and presence of organized crime in the market, citing the

arrest in April, 1989, of nine Bonanno family members and associates in the market on racketeering and loansharking charges.

E. The Local 30/30B Decreeship

The Roofers Local 30/30B decreeship was established by court order on May 23, 1988, as a result of a civil RICO suit filed by the Government. Robert W. Welsh, Jr., was named chief court liaison officer to the union. The decreeship was entered after the court found a longstanding pattern of violence, threats, intimidation, and bribery on the union's part to assert its interests and maintain internal discipline.

The judge in this case fashioned a "decreeship" as a form of receivership that allows the structure of the union and its elected leadership to remain in place. The responsibility for operating the union in compliance with the law and the court's orders remained with the rank and file and its elected leaders. However, the court maintained jurisdiction over the entity through the chief court liaison officer, who must review and approve virtually all financial matters for the union.

In testimony before the Subcommittee, Welsh commented that the judge in this case, building on the experiences of prior trusteeships, did two things differently: First, he left the union's current leadership in place; and, secondly, he asserted, through the chief court liaison officer, plenary authority over all aspects of the union and the benefit plans, including ultimate contol over basic operations, such as check writing; contract negotiation and execution; and the undertaking of any financial activity.

In his testimony, Welsh expressed mixed feelings about his progress in eliminating the pattern of excessive violence that had plagued the local for much of its history:

> I am reasonably confident that no overt threats and intimidation are occurring as to the manner in which the union relates to the outside world (primarily contractors and suppliers). On the other hand, many contractors believe that there is at least an undercurrent of intimidation based upon the mere fact that their bargaining opponent is the Roofers union. It will take many years to change the perception that Roofers will always be violent, and I encourage contractors to provide me with information as to any threats and intimidations. These have become increasingly rare, and I think we are indeed developing a pattern.
>
> On the other hand, I believe we have made very little progress towards the union's use of threats and intimidation to achieve and maintain order within its ranks, and this is a matter of grave concern to the Court and me.

An election in June, 1989, where dissidents reported harassment and intimidation, appears to have confirmed Welsh's fears.

This decreeship's future progress is particularly pertinent to the ongoing debate on the use of civil RICO in that, in this case, existing union leadership was allowed to remain in office. This method is, of course, similar to that adopted in the settlement agreement reached in the Government's civil RICO suit against the International Brotherhood of Teamsters. Moreover, it is a method which

Lane Kirkland testified was preferable to the traditional RICO trusteeship:

> . . . [T]he AFL-CIO regards remedies in RICO suits that limit the Government to a secondary role—and grant the power to review the actions of the union's properly elected officers to assure against any continuation of a prior proved pattern of illegal acts—as qualitatively superior to the remedy of a RICO trusteeship.

IX. TRUSTEES CITE NEED FOR FUNDING AND FEDERAL ASSISTANCE

Nearly all of the trustee witnesses agreed that in order to succeed, a trusteeship needs to be adequately funded. Without proper funding, a trustee cannot hire the personnel appropriate to carrying out the court's mandate. To date, trusteeships have, for the most part, been funded from the entity placed into trusteeship, an entity which, frequently, is in fiscally poor condition to begin with. One exception is the Fulton Fish Market administratorship, which, according to the terms of the consent judgment, is funded by the Government.

A second problem which aggravates the lack of funding is the absence of a cohesive Federal policy on the amount and type of Federal assistance that should be extended to the trusteeships once they are imposed. The witnesses described various levels of Federal assistance afforded to each trusteeship. In the absence of any clear-cut Government directives, the assistance, where it was given, was usually the result of personal relationships, rather than formal, official recognition.

Chairman Nunn asked each trustee if he had received adequate support from the Department of Justice and the Federal law enforcement community to carry out his duties effectively. In the Local 560 cases, Edwin Stier testified that he had not received the necessary institutional support, adding that the kinds of resources, personnel, or other assistance that he needed "simply isn't there." He noted that for the most part, the assistance secured for the trusteeship came as a consequence of his personal relationships with key people in the Department of Justice and the Department of Labor. Stier commented that filing and winning a civil RICO case is only half the battle. He emphasized that the Justice Department needs a strategy that will provide sufficient personnel and financial support to make a trusteeship continue to work after it is established.

Eugene Anderson testified that in the Local 6A case he received some assistance, but he noted a need for improvement. He stated that the Government tends to lose prosecutorial interest when the case is transformed from a criminal case into a civil one. Anderson recommends that the Government provide an alternative method of funding the trusteeship; continue investigative activities in connection with the trusteeship; and involve other Government agencies, such as the Department of Labor, to assist the trustee in changing the culture of the union by educating the rank and file on union democracy.

Although Trustee Arthur Eisenberg did receive assistance from the Justice and Labor Departments when he requested it, he be-

lieves that the Government should have a structure or arrangement for assistance in place to assist a trusteeship. Eisenberg recommended an alternative form of funding for trusteeships, when warranted by the circumstances, noting that an "innocent" membership should not be required to pay for a trusteeship at the risk of placing the union at financial risk.

In the case of Roofers Local 30/30B, Robert Welsh testified that his decreeship has been well supported by all agencies of the Federal Government. He singled out the Department of Labor's Office of Labor Racketeering for its involvement "on a regular basis supporting the operation of the decreeship." He also acknowledged the FBI's assistance in providing "access to a substantial body of background and intelligence data."

Despite a Government-funded staff, Brian Carroll testified that the Fulton Fish Market administratorship has found it necessary to seek additional support from Federal agencies:

> Of the Federal agencies we deal with, the Federal Bureau of Investigation has been excellent and remains a resource for us. The balance of the Federal agencies we have dealt with are most helpful when there is a personal contact involved. If there were a liaison designated from each agency it would save time and make our getting information easier.

The Administrator for the Fulton Fish Market also reiterated the importance of Government funding to the success of his operations.

> . . . [O]ur job would be much more difficult if we had to appeal for funds to any entity other than the Government and the court. . . . The fact that we are funded by the Government allows us the flexibility to engage the expert advice we deem necessary.

In response to the points raised by the trustees, Assistant Attorney General Dennis acknowledged that "we are still in a learning situation," regarding the question of appropriate Federal support for trusteeships. While Dennis appreciated the trustees' need for information and expertise, he stated his hesitancy to allow the FBI to become a "freewheeling investigatory arm of the trusteeship." While Dennis noted that there was currently "no consensus on the appropriate source of funding for the operations of trustees," he suggested that "we should look primarily to the labor organization or enterprise that is being supervised."

Floyd Clarke, Executive Assistant Director for the FBI, testified that the FBI's role in the post-judgment phase of a civil RICO suit is one of support of the receiver and enforcement of the imposed judicial remedial action. The FBI, he added, is an investigative agency and "does not play an administrative or regulatory role in receivership administration." In processing any information received from the trustee about alleged criminal conduct or violation of the civil court order, the FBI proceeds in the same manner as it does when acting on information received from any private party. He noted that the FBI has no legal obligation to respond to a court-

appointed receiver's request for investigation, unless it falls within the FBI's statutory authority.

Richard G. Hunsucker of the Department of Labor's Office of Labor-Management Standards (OLMS) testified that OLMS could assist the trustee in the conduct of officer elections and in the review of the union's financial practices. He added that assistance by OLMS could also educate the union's members and officers regarding their rights and obligations under the LMRDA and lay the foundation for them to meet or exceed its standards. OLMS has assisted the Local 560 and Local 814 trusteeships and the Local 30/30B decreeship in the area of union elections.

Raymond Maria, Deputy Inspector General for the Department of Labor, testified that the Department's Office of Labor Racketeering (OLR) has conducted investigations based on information provided to OLR by trustees and, when called upon, routinely furnishes the trustee advice and expertise. This, he said, will continue to be the policy of the OLR.

X. THE IBT CONSENT JUDGMENT

In June, 1988, the United States filed a civil RICO suits in the Southern District of New York against the International Brotherhood of Teamsters *et al.* The suit was the Government's largest and most expansive civil RICO suit to date, seeking, for the first time, the imposition of a trusteeship in an international, as opposed to a local, union.

The suit alleged that the Teamsters leadership allowed a pattern of LCN corruption to exist—including violence, murder, bribery, extortion, theft, and misuse of union funds—which deprived the IBT rank and file of their rights. U.S. Attorney Benito Romano testified that the primary objectives of the lawsuit were to restore union democracy in the IBT and to combat LCN corruption and domination of the union. The parties arrived at a settlement on March 13, 1989, and a consent judgment was approved by Judge Edelstein of the Southern District of New York on March 14, 1989.

In noting the historical significance of the consent judgment, Chairman Nunn commented:

> For the first time, we are examining an agreement between the Teamsters union and Federal law enforcement officials. For the first time, these parties have agreed to work together to ensure, quoting from the agreement, ". . . that there should be no criminal element or La Cosa Nostra corruption of any part of the International Brotherhood of Teamster."

In the consent judgment, the IBT defendants acknowledged that there have been allegations, sworn testimony and judicial findings about past problems with LCN corruption in various elements of the IBT. They agreed that there should be no criminal element or LCN corruption in any part of the IBT, and that the IBT be operated for the sole benefit of its members and without unlawful outside influence.

The consent judgment creates a panel consisting of three court-appointed officers, who will oversee the IBT until certification of the IBT's 1991 election: an independent administrator, an investi-

gations officer, and an elections officer. These officers are given broad powers under the agreement. The elections officer and the independent administrator are empowered to resolve all disputes concerning the conduct and/or results of the 1991 election. The independent administrator and the investigations officer have the authority to investigate and discipline any corruption associated with the conduct and/or results of the 1991 elections.

The independent administrator will possess the same rights and powers as the IBT's General President and/or General Executive Board, under the IBT constitution, and Title 29 of the United States Code, to discharge those duties which relate to disciplining corrupt or dishonest offices, agents, employees, or members of the IBT or any of its affiliates (locals, joint councils, and area conferences). This includes the power to appoint temporary trustees to run the affairs of these affiliates.

The investigations officer will have the authority to investigate the operation of the IBT and/or any of its affiliates. With just cause, the officer may initiate disciplinary charges against any officer, member, or employee of the IBT or any of its affiliates, in the manner called for under the IBT constitution. This officer may also institute trusteeship proceedings as prescribed by the IBT constitution.

The consent judgment also empowers the independent administrator with veto authority. This officer can veto any action that the IBT undertakes if he reasonably believes that such action constitutes or furthers an act of racketeering, or furthers or contributes to the association of the IBT or any of its members with LCN members or associates.

The investigations officers also possesses the power to gain lawful access to any information regarding the IBT, such as books, records, meetings, and so on, and the power to authorize audits.

While the agreement represents the IBT's acceptance of these officers and the very broad powers they possess, it also represents the Government's agreement that 12 IBT officers, named as defendants in the suit, will retain their offices, though subject to removal by the court-appointed administrator. In the original suit, the Government had sought their removal from office by court order.

The consent judgment dictates radical changes in the IBT election procedure, which was one of the principal targets of the Government's lawsuit. U.S. Attorney Romano strongly criticized the IBT's pre-existing election procedure:

> The alleged election of convention delegates is really no election at all. Until the settlement of the Government's civil RICO case, an exceedingly small percentage of convention delegates were actually elected. The overwhelming majority of convention delegates became delegates automatically by virtue of their holding office in a Teamsters local or a Teamsters affililate.
>
> Sixteen of the 18 current international vice presidents began their careers as trustees of the union by appointment. Every president since Jimmy Hoffa began holding senior office by appointment. To refer to the existing

> system as democratic or to the current Teamsters officers as democratically elected is a sick joke.

Given that history, Romano called the reform of the IBT election procedure "far and away the most significant remedial step that the Government could have taken in this action." The agreement requires the IBT to amend its constitution to allow for the direct election of IBT officers by the general electorate via secret ballot, thus institutionalizing the concept of one man, one vote.

Following the certification of the 1991 election, an independent review board will be created which will take the place of the court-appointed officers. This board will be empowered to investigate any allegations of corruption or other criminal acts; any allegations of domination or control of any IBT affiliate, member, or representative by LCN on any other organized crime group; and any incidents of non-cooperation with the review board. The board will consist of one Department of Justice appointee, one IBT appointee, and a third person to be selected and agreed upon by the first two appointees. There is nothing in the consent judgment which terminates the existence of this independent review board.

In the April 1989, hearing, the Subcommittee examined the meaning of the terms of the consent judgment, as well as its probable effect over the long term on the IBT. Representatives of both parties to the agreement testified: U.S. Attorney Romano for the Government; and William J. McCarthy, General President, and James T. Grady, General Counsel, for the IBT.

The testimony of these witnesses revealed not only their clearly opposite views of the merits of the Government's original case, but also potential problems and unanswered questions regarding the future application of the consent judgment.

For example, at first reading, the judgment strongly suggests that the changes it dictates, including changes in the election procedure, are immediate and permanent. One section of the judgment clearly amends the IBT constitution to incorporate and conform with the terms of the consent judgment. Another section states that nothing in the consent judgment authorizes the parties or court-appointed officers to modify or amend the terms of the order.

On the other hand, the consent judgment specifically affords the delegates at the 1991 IBT convention the opportunity to vote on the election amendments to the IBT constitution which have been agreed to by the IBT defendants and the Government in the consent judgment. The consent judgment also contains a provision that incorporates the Landrum-Griffin free speech rights of the parties or any IBT officers, delegate, or member.

Chairman Nunn asked the witnesses whether the latter provisions meant that the Teamster delegates to the 1991 convention, including party defendants such as McCarthy, could, in fact, vote to defeat the amendments included in the consent judgment and, thus, nullify the effect of the agreement. In response, General President McCarthy testified that he intended to "do everything in my power to support" the provisions of the consent judgment at the 1991 convention. IBT General Counsel Grady cautioned, however, that, in his view, the judgment's free speech provision guarantees McCarthy and other Teamster delegates the right to change

their mind and vote against the provisions, acknowledging that the Government would then be free to "go back into court."

U.S. Attorney Romano confirmed the likelihood of that possibility in his testimony:

> They [the IBT] have retained their First Amendment rights under this agreement, so they can exercise it if they choose to pay that price. But we have told them, and we are saying it again today, that the moment that—if this agreement is voted down, we expect to be in court seeking to enforce this agreement. And if it is necessary, we will reopen the litigation and go through to final judgment.

XI. THE ISSUE OF A UNION'S RIGHT TO PAY ATTORNEY FEES OF UNION CIVIL RICO DEFENDANTS

During the course of these hearings, the Subcommittee heard conflicting testimony on the wisdom of the Government's policy of not allowing a union to pay the attorney fees of union officials who are civil RICO defendants on charges relating to their union duties. In the Government's civil RICO suit against the IBT, the Government contended that attorney fees paid by the IBT for the defense of union officials who were defendants in the suit would be improper and recoverable, upon findings of misconduct by those defendants, as alleged in the suit.

At the hearing, IBT General Counsel Grady vehemently objected to the Government position on this point and recommended that—

> RICO be clarified so that no union is precluded from using its resources to hire legal counsel to defend itself or its officers.

In the IBT suit, the Government threatened to file a motion enjoining the IBT from paying its officers' attorneys' fees. Grady contended that, as a result, the defendants' attorneys were facing a long trial without a guarantee of payment for their services, a fact which he believes inevitably impacted the adequacy of their counsel. General President McCarthy added that the threat of non-payment of his attorney's fees was a major factor in his decision to agree to a settlement. As part of the consent judgement, the Government agreed to forego its claim for the attorney fees.

U.S. Attorney Romano stated that case law of the Second Circuit prohibits the payment of attorney fees, if there has been a finding of misconduct on the part of the union member. The case applies only to unions and has been relied on by the Government only in cases involving unions. Since the allegations in the Government's IBT complaint were that the defendant officers had engaged in misconduct, the Government took the position that those fees may be recoverable. Romano added that the Government would not have been able to recover those fees until after receiving a favorable judgment.

Chairman Nunn questioned Romano on the effect of this policy on the settlement negotiations:

> Senator NUNN. As a lawyer, it does seem to me that a lawyer who fears he is not going to get paid because of the Government position, denying attorneys' fees, has extraor-

dinary incentive to settle a case if, by settlement, the Government agrees that he can get paid.

Mr. ROMANO. Well, the whole basis, the fact of the matter is that the settlement pre-determines the possibility of a judgment at the end of a process that the union member engaged in misconduct, which is the very basis for withholding the fees. But I agree with the Chairman that it is a sensitive issue and one which we fortunately did not have to face in this case.

The official Department of Justice Policy on this point states that attorney fees should not be paid, unless the charges prove meritless; there is a good faith belief that the charges are unsupported; or the officer is exonerated.

Chairman Nunn pointed out a contradiction between the official Department policy and the Government's actions in the IBT case. In the IBT case, the government withdrew its claim of improper payment of attorney fees for those defendants who settled, even though they had not been exonerated. In those circumstances, the prospect of guranteed payment would give the defendant's attorney a greater incentive to settle the case.

Assistant Attorney General Dennis admitted the contraction and agreed that the attorney fees issue should not be invoked for "tactical advantage" by the Government. He assured the Chairman that the Department would take a "close look" at the issue.

XII. FINDINGS, CONCLUSIONS, AND RECOMMENDATIONS

1. The Federal law enforcement effort against traditional organized crime (La Cosa Nostra) should be maintained. Although that effort has, in the 1980's, scored significant victories in a series of prosecutions of the major crime families, the LCN remains an active criminal organization in the United States. While law enforcement has clearly made substantial progress in the battle against organized crime, the war is not yet over. If left alone, the LCN is fully capable of regaining whatever strength and power it may have lost by virtue of the recent prosecutions.

The LCN is also clearly changing, impacted not only by the convictions of many of its older leaders, but also by overall societal changes. It is important to recognize, however, that not all of these changes are for the better. To the contrary, many may make future law enforcement efforts against the LCN even more difficult. The prosecutions, for example, have left many LCN families in flux, with older leaders being replaced by younger, more "Americanized," and less disciplined, members. As with the rest of society, the growth of the illegal drug trade has also changed the LCN: younger members, both as traffickers and as users, are becoming more violent, less attached to the traditional LCN values and structure, and more unpredictable. As the LCN continues to change, the law enforcement community should closely monitor those changes and develop its strategy accordingly, in order to maximize its effectiveness against the LCN.

2. The Department of Justice, the Federal Bureau of Investigation, and other Federal law enforcement agencies should continue, in appropriate and deserving cases, their innovative and effective

use of the enterprise theory of investigation, the task force approach, and the provisions of the RICO statute. The successful prosecutions of LCN families in the 1980's resulted not from an influx of new statutes or resources, but rather from innovations in the use and application of existing tools and resources by the Federal law enforcement community.

For example, although the RICO statute was enacted in 1970, it was not until the late 1970's and early 1980's that law enforcement began to fully utilize its criminal provisions against the LCN. Valachi first depicted the LCN as a structured, disciplined organization in 1963, yet it was not until nearly 20 years later that Federal law enforcement began to attack the LCN as an organization through the enterprise theory of investigation.

While applauding recent law enforcement success against the LCN, the Subcommittee believes that we can ill afford any further delay in developing equal expertise in the use of these tools against other types of criminal organizations, ranging from the narcotics cartels and other emerging groups to sophisticated financial crime networks. The Attorney General should prioritize and encourage the effective use of these investigative techniques by the Federal law enforcement community in other areas of major organized criminal activity.

3. In that same vein, the Attorney General should improve and expand Justice Department efforts to familiarize prosecutors and investigators with the civil provisions of the RICO statute and their potential use against organized criminal activity. The Department, at the same time, should insure that this powerful statute is not misused in underserving cases by over-zealous prosecutors.

As demonstrated in the few civil RICO suits which have been filed by the Government, the potential impact of the statute's civil remedies goes far beyond that of the punitive provisions of the criminal law. In theory, a judge has broad latitude in civil RICO suits to create remedies that will not only remove existing corruption and racketeering activity in a given entity, but also prevent it from recurring. In practice, that power has authorized the reorganization and Government monitoring of both labor unions and private commercial entities, something clearly unprecedented in law enforcement efforts in this country.

The Subcommittee reviewed in depth those cases where trusteeships and other types of court-ordered supervision have been imposed under the civil provisions of the RICO statute. In each case, a trustee or other court-appointed official, equipped with novel and untested supervisory powers, faced longstanding and entrenched corruption and racketeering activity. In that context, it is not surprising that these court-appointed officials, while citing both accomplishments and setbacks, all declined to predict the final outcome of the court reorganization. The Department of Justice should closely monitor developments in these cases, in an effort to improve future use of the statute.

The Subcommittee believes that, while still too early to assess the ultimate success of civil RICO in these cases, their progress to date clearly shows the relevance and potential importance of these provisions to future law enforcement efforts. Where egregious circumstances justify the use of this remedy, the Government should

be prepared to seek it, whether the entity at issue be a labor union or a private business. The Attorney General should insure that the use of these provisions, in appropriate and deserving cases, is included as part of a comprehensive Federal law enforcement strategy against major organized criminal activity.

4. The Attorney General should issue written policy standards clearly defining those circumstances in which the filing of a civil RICO suit by the Government is appropriate. The civil RICO provisions offer the Government sweeping new powers in the law enforcement arena. The exercise of those powers, however, does not come without substantial responsibilities for the prosecutor. The injection of direct Government supervision over the operations of labor unions or commercial entities is a drastic remedy to be used only in the most extreme and egregious cases.

As testimony at the Subcommittee's hearings demonstrated, the Government's use of the civil RICO provisions has been extremely controversial. Representatives of organized labor testified that the removal of elected union officers and direct Government control of union operations under civil RICO was, in their view, never justified. Should the Department of Justice increasingly seek this same result in other commercial entities, as indicated at the hearing, this type of criticism will surely escalate. Absent some clearcut limitations on the use of this remedy, there is a valid public concern that the tremendous power which the statute offers may be abused.

During the hearings the Subcommittee asked Government witnesses to define what criteria, if any, had to be satisfied before the Government sought this admittedly drastic remedy. Their answers reflected varying personal views of the statute, rather than specific written departmental policy. While the Department of Justice manual on civil RICO does caution that the statute "not be used lightly," the only other considerations that it suggests deal with potential, and mostly legal, advantages for the Government: i.e., burden of proof, limits on discovery, venue, etc.

These types of concerns do little to assuage public fears that the Department of the Justice may be tempted to unfairly abuse the statute's power to its own advantage. The Department must make some effort to insure that societal implications, and not merely investigative strategies and advantages, are considered when unleashing the full power of the RICO statute. At the minimum, the Attorney General should issue specific written criteria which will insure that these types of cases are filed only in the most extreme circumstances, where corruption and criminal activity have beome entrenched in an entity, and where alternative remedies have been unable to successfully address the problem.

5. In the case of labor unions, the Department of Justice should study and consider the feasibility and potential effectiveness of alternative remedies for the Government, short of the imposition of a civil RICO trusteeship. A trusteeship is clearly an extreme remedy in the case of a labor union in that it entails the removal of the elected officers of the union. A non-elected, court-appointed trustee is installed to run the day-to-day operations of the union.

During the course of the hearing, representatives of organized labor were strong in their criticism of this procedure, claiming that it eliminated, even if for a short time, the democratic nature of a

union. As a preferable alternative, these witnesses suggested other methods, including those available under the Landrum-Griffin Act, by which Government monitoring of union activities is substantially increased, while the union's elected officers retain their positions.

Even where civil RICO is used by the Government, its provisions are clearly broad enough to authorize not only trusteeships, but other, less restrictive, types of reorganizations. In fact, in at least three of the cases where the Government had originally sought a trusteeship (Local 814, Local 30/30B, and the IBT cases), the reorganization ultimately imposed allowed elected union officers to retain their positions.

The Subcommittee recognizes that there may be cases where criminal activity has so dominated a union and its officers that removal of elected officials and imposition of a trusteeship may be the only effective remedy. On the other hand, removal of elected officials and direct Government control of a union is clearly not preferable, if other, less drastic, but nevertheless effective, alternatives exist. The Department of Justice should closely study the progress of the Local 814, 30/30B, and IBT cases to determine the feasibility of remedies short of trusteeships. The Government should seek imposition of trusteeships only in cases where there is no other way to effectively combat longstanding corruption and criminal influence in a labor union.

6. The Department of Justice, the enforcement arm of the Department of Labor, and the Federal Bureau of Investigation should establish an ongoing liaison with the AFL–CIO and other representatives of organized labor, in order to further communication and cooperation between them and to identify areas where they can work together to eliminate criminal influence from the labor movement.

During the course of the hearing, representatives of Federal law enforcement agencies and representatives of organized labor were highly critical of each other's efforts to rid the labor movement of corruption and other criminal activities. While both sides professed their belief that the labor movement should be free of those influences, they disagreed strongly on the methods to be used in achieving that goal.

Given the strength of the disagreement, the Subcommittee was not surprised to learn that there has not been any type of permanent liaison or "pathway of communication" between Federal law enforcement agencies and, for example, the AFL–CIO. The Subcommittee recognizes that, given the sensitive nature of ongoing criminal investigations, law enforcement agencies would not be free to discuss all matters of potential concern with organizations such as the AFL–CIO. There are, however, many other areas—including ways in which the labor movement can itself help detect or prevent criminal activity—where mutual discussion and exchange of views would be extremely beneficial.

During the course of the hearing, the Subcommittee pressed representatives of the AFL–CIO, the Department of Justice, the Department of Labor, and the Federal Bureau of Investigation to take steps to establish this type of continuing relationship. All professed a willingness to do so. The Subcommittee urges them to follow

through not only on establishing that liaison, but also on devoting sufficient effort and interest to maintaining and strengthening the liaison in the future.

7. Once a court-ordered trusteeship or other form of reorganization is imposed through a civil RICO case, the Federal law enforcement community should make every effort to provide adequate support to the court-appointed supervisory officials. This should include, where permitted by law, intelligence information, expertise, and investigative assistance.

The trustees and administrators that testified before the Subcommittee were unanimous in their view that, once established, a RICO trusteeship or administratorship required substantial support and assistance from the law enforcement community. In the majority of cases, where the court-ordered reorganization was self-funded, the ability to rely on that assistance was critical to the reorganization's ultimate success. Even in the case of the Fulton Fish Market administratorship, which was fully staffed via direct Government funding, there was a continuing need for law enforcement assistance.

Despite the need for such assistance, the trustees testified that there was no guarantee that it would be forthcoming. Some of the trustees found a lack of assistance, noting that once the civil RICO judgment was obtained, the Government seemed to lose interest. Where law enforcement agencies did provide assistance, the trustees testified that it was often the product of personal relationships, rather than any coherent Government policy.

Obviously, after the Government devotes substantial time and resources to litigating a civil RICO suit, the Government's interest in the success of the suit does not end when the trusteeship is imposed. The ultimate success of the initial suit depends upon the ability of the trusteeship to eliminate corruption and criminal activity from the entity in question. Once a trusteeship or administratorship is imposed, the Department of Justice should establish a continuing liaison with the trustee or administrator, monitor their progress in achieving the goals of the initial suit, and insure that needed Federal assistance and support is provided to the maximum extent possible.

8. The Department of Justice should consider whether alternative forms of funding are necessary in cases where a trusteeship is imposed on an entity that is in poor financial condition. The majority of reorganizations that have been imposed under civil RICO have been self-funded, that is, the cost of the reorganization is borne by the entity against whom the original suit was filed. The testimony at the hearing suggested that, in most of those cases, the self-funding mechanism proved inadequate.

In those cases, the trustees testified that the financial resources of the entity had already been severely drained by the costs of the litigation preceding the reorganization. Moreover, some of the entities were in poor financial condition even prior to the litigation. As a result, the trusteeships suffered from funding shortages that adversely affected their ability to perform successfully. One trustee testified that, in his view, all his investigative powers were "meaningless" because of inadequate funding.

In bringing a civil RICO suit, the Department of Justice must take into account the financial condition of the entity in question in suggesting to the court a workable funding mechanism for the trusteeship it seeks. Given the broad language of the RICO statute, various alternatives are possible: in the Fulton Fish Market case, the administratorship is fully staffed as a result of direct Government funding. This may not be necessary or feasible in all cases, but it is clearly a possibility which must be considered where self-funding is incapable of sustaining the reorganization effort.

9. The Department of Justice should re-examine its policy and practice regarding the payment by unions of attorney fees for union defendants in civil RICO cases. In the Government's case against the International Brotherhood of Teamsters (IBT), the Government claimed that the IBT's payment of attorney fees for union officer defendants was improper and, as such, recoverable by the Government. After a settlement was reached, the Government withdrew its claim for the fees.

At the hearing, representatives of the IBT claimed that the attorney fee issue had been used as leverage by the Government in procuring a settlement. According to their reasoning, an attorney is more eager to settle a suit if he knows that, by doing so, payment of his fee is guaranteed. Clearly, a defendant in a civil suit is entitled to the unbiased advice of his counsel based on the merits of the case, and not on the possibility that the Government will confiscate his fee.

Official Justice Department policy requires the non-payment of fees, unless the charges against the officer proved meritless; there is a good faith belief that the charges were unsupported; or the officer is exonerated. None of these happened in the IBT case and, yet, upon settlement, the Government withdrew its claim for the attorney fees. Under those circumstances there is, at the least, the appearance that the Government is using the attorney fee issue as an unfair advantage in settlement negotiations. The Department of Justice should review its policy and practice in this area and take steps to avoid this type of situation in future cases.

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The following Senators, who were members of the Permanent Subcommittee on Investigations at the time of the hearings, have approved this report:

Sam Nunn
John Glenn
Carl Levin
James R. Sasser
David Pryor
Herbert Kohl
Joseph Lieberman
William V. Roth, Jr.
Ted Stevens
William S. Cohen
Warren B. Rudman
Pete Wilson

Other Senators, who are members of the Committee on Governmental Affairs, approving this report are:

Daniel K. Akaka
John Heinz

The members of the Committee on Governmental Affairs, except those who were members of the Senate Permanent Subcommittee

on Investigations at the time of the hearings, did not participate in the hearings on which the above report is based. Accordingly, they have taken no part in the preparation and submission of the report, except to authorize its filing as a report made by the Subcommittee.

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